

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6470 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VALAMJI N VARU

Versus

CHIEF OFFICER, ANJAR NAGAR PALIKA

Appearance:

MR DM THAKKAR for Petitioner

MR YS MANKAD for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/04/98

C.A.V. JUDGEMENT

1. The petitioner, an employee of the respondent, Anjar Nagar Palika, filed this special civil application and prayer has been made for quashing and setting aside of the action of the respondent, in particularly, Chief Officer of the Anjar Nagar Palika of not implementing the resolution No.25 dated 16th May, 1986 of Executive Committee of the respondent No.2. Further prayer has been made for direction to the respondents to forthwith

implement the aforesaid resolution of the Executive Committee. Then comes the prayer of the petitioner for direction to the respondents to reinstate him forthwith to the post of Pump Operator-cum-Engine Driver (Class-III Post) with continuity of service and also to further direct the respondents to pay the petitioner backwages for the period between 24-6-1984 to the date of reinstatement with 12% interest etc..

2. Though this petition has been admitted by this Court on 7-4-1988, interim relief as prayed for by the petitioner has not been granted. This petition has been filed by the petitioner on 17th December, 1986.

3. The facts of the case relevant for the purpose of deciding this petition are to be taken briefly:

The petitioner has come up with a case that he is serving as a Pump Operator-cum-Engine Driver, a Class-III post under the respondents since last 20 years. The Chief Officer of the Nagar Palika, the respondent No.1 herein, under its order dated 23rd June, 1984 directed the petitioner to work as Mixer Engine Driver, copy of this order is submitted by the petitioner along with this special civil application as annexure 'A'. The petitioner made a protest against the aforesaid order by filing an application pointing out therein that the direction of the Chief Officer directing him to work as a Mixer Engine Driver is not in accordance with law. This protest of the petitioner was not responded, and as such, the petitioner went on writing various letters and making personal approach to the respondent No.1 to permit him to resume his duties as Pump Operator-cum-Engine Driver. The petitioner has come up with a case that he was not permitted to discharge his duties as Pump Operator-cum-Engine Driver. The respondent No.1 vide its memo dated 9-5-1985 chargesheeted the petitioner inter-alia on the ground that the petitioner has remained absent without prior sanction for the period between 24th June, 1984 to 15th April, 1985. The petitioner has given out defence that during the aforesaid period the petitioner daily reported to the place of his working but the respondent No.1 has not allowed him to join his duties. The petitioner gave a detailed reply to the aforesaid chargesheet and defence has been taken that the respondent No.1 has prevented him from joining his duties. The respondent No.1 was not satisfied with the reply of the petitioner, and as such, he proceeded to hold a departmental inquiry against him. At the end of the departmental inquiry, the respondent No.1 by order dated 1-1-1986 issued a second showcause notice to the

petitioner inter-alia stating therein that the Committee is of the opinion that the petitioner is guilty of the charges levelled against him and he was called upon to show cause as to why one increment of the petitioner should not be withheld with permanent effect. The petitioner submitted detailed reply to the said show cause notice in which he denied all the allegations. The matter has been placed before the Executive Committee and under the resolution No.25 dated 16-5-1986 in its meeting held on 16-5-1986, the Executive Committee resolved that the petitioner is not guilty of the charges levelled against him. Further it is resolved to the effect that the petitioner should be forthwith taken on duty as Pump Operator-cum-Engine Driver by paying the arrears of salary with continuity of service. After the aforesaid resolution, the petitioner has come up with a case that he approached on various occasions to the respondents for implementing the aforesaid resolution but that was not implemented. Hence, this special civil application before this Court.

4. The special civil application had come up for admission before this Court on 22-12-1986 on which date, notice was issued. Thereafter, on 17th April, 1988 the petition was admitted but the interim relief as prayed for by the petitioner was declined. This petition has been contested by the respondents by filing reply to the same.

5. The learned counsel for the petitioner admits that the petitioner has not joined the services as Mixer Engine Driver and during this period he has also attained the age of superannuation. Reason for not joining the services by the petitioner has been given that he could not have been asked to join the lower post.

6. In reply to the special civil application, the respondents have come up with a case that the post of Pump Operator-cum-Engine Driver is a Class-III post and that of Mixer Engine Driver is also a Class-III post carrying the same pay scale.

7. The petitioner has not filed rejoinder to the reply filed by the respondents. So the fact that the posts of Pump Operator-cum-Engine Driver and Mixer Engine Driver are Class-III posts of the same pay scale stand uncontroverted. It has further been stated in the reply that the resolution of the Executive Committee is contrary to Rule-47 of the relevant rules and as such, the Chief Officer has not committed any error in not giving effect to to the resolution No.25 of the Executive

Committee dated 16-5-1986 on which reliance has been placed by the petitioner.

8. The learned counsel for the petitioner contended that the action of the respondent, Chief Officer, asking the petitioner to work as a Mixer Engine Driver was wholly arbitrary and unjustified as it was a post of lower status. It has next been contended that when the resolution has been passed by the Executive Committee then the Chief Officer, subordinate to the Committee should have complied with the same. However, the learned counsel for the petitioner is unable to give any justification of not joining the post by the petitioner even after this Court has declined to grant the interim relief to the petitioner.

9. Nobody is present on behalf of the respondents to make oral submissions.

I have perused the reply.

10. There is no dispute that the posts of Pump Operator-cum-Engine Driver and that of Mixer Engine Driver are Class-III posts carrying same pay scale. So even if the petitioner has been asked by the Chief Officer of the Anjar Nagar Palika to work as Mixer Engine Driver, it cannot be said by any stretch of imagination that it is an order lowering the status of the petitioner or lowering his emoluments. When the posts of Pump Operator-cum-Engine Driver and Mixer Engine Driver are of same category and of same pay scale, the action of the petitioner not to comply with the order of Chief Officer asking to work as a Mixer Engine Driver is wholly arbitrary and unjustified and it amounts to a misconduct. The petitioner has rightly been given the chargesheet and second show cause notice proposing thereunder the penalty of withholding of one grade increment with permanent effect. It is true that the Executive Committee has taken a view that the action of the Chief Officer to ask the petitioner to work as a Mixer Engine Driver is not correct but I do not find any cogent and justified reason given in support of the aforesaid view taken by the Executive Committee.

11. From reply, I find that the petitioner is also guilty of concealing material fact from this Court. Earlier the Executive Committee vide its resolution No.610 dated 6-1-1986 has resolved that the petitioner is guilty of alleged misconduct and further resolved that he deserves to be dismissed from services but instead of giving him the penalty of dismissal the Executive

Committee issued second show cause notice proposing thereunder the penalty of withholding of one grade increment with permanent effect. The petitioner received the second showcause notice and he has given reply to the same and he very conveniently avoided and suppressed this fact. Be that as it may. The departmental inquiry held against the petitioner was held to be valid and he was found to be guilty of charges framed against him. However a lenient view has been taken and instead of giving severe penalty of dismissal from services the penalty of withholding of one grade increment with permanent effect was proposed to be given. So before the Executive Committee only question was of giving him the penalty of withholding of one grade increment with permanent effect.

12. So far as other part of the matter regarding the proof of charges against the petitioner as well as to hold him guilty of charges is concerned, it is suffice to say that it was not open to review by the Executive Committee. However, even if the Executive Committee wanted to take the matter in review then Rule 47 of the relevant Rules should have been followed, which has admittedly not been followed. Rule 47 of the Rules reads as under:

RULE 47 : MODIFICATION OF COMMITTEE'S RESOLUTION

"In no case shall any resolution of a Committee be modified or cancelled by the Committee except by a resolution supported by at least half of the full number of members of the Committee.

Provided that the consent in writing of President shall be obtained if the First Resolution had been passed by more than half the full number of members of the Committee and the personnel of the Committee has been changed since the First Resolution was passed".

13. As per this Rule, the resolution of the Committee cannot be modified or cancelled except by a resolution supported by at least half of the full number of members of the Committee. A proviso to this Rule further provides that a consent in writing of President shall be obtained if first resolution has been passed by more than half of the full number of the members of the Committee and the personnel of the Committee has been changed since first resolution has been passed. The first resolution has been undisputedly passed by more than half of the full members of the earlier Committee i.e. by majority

of 4 : 2 and the personnel of the first Committee had been changed since the first resolution has been passed. The new Committee has to take the consent of the President, which has not been taken in the present case. So I find sufficient merits in the contention of the respondents in the reply that even the second resolution passed by the Executive Committee on 16-5-1985 was illegal as it is passed in violation of the statutory provisions of Rule 47. So on merits the petitioner has no case and the second resolution passed by the Executive Committee could not have been given effect to. Secondly, the petitioner has also concealed the material fact and lastly, the conduct of the petitioner not to join the post of Mixer Engine Driver without any justification, and the cumulative effect of all these things is that this petition deserves to be dismissed. The petitioner should have complied with the order of the Chief Officer but he has not complied that order for years together even earlier to filing of the petition and worse part is that when this Court has declined to grant the interim relief, he has not joined the post. That shows how the petitioner considers himself above the law.

14. In the result, this special civil application fails and the same is dismissed. Rule discharged.

zgs/-